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SUBJECT: DAILY SUMMARY OF JAPANESE PRESS 04/18/08

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ARTICLES:

- (1) Nagoya High Court finds Iraq airlift mission to be unconstitutional; Decision casts pall on Japan-U.S. integration policy; Unannounced conditions mentioned; May affect Indian Ocean refueling operation as well

The Nagoya High Court ruled yesterday that part of the Air Self-Defense Force's airlift mission in Iraq is a breach of Article 9 of the Constitution. The decision threw cold water on Japan's security policy of promoting SDF integration with the U.S. military and shifting weight to overseas missions. Touching on some activities that have not been revealed by the government, the court determined that the ASDF's mission to airlift armed U.S. troops constitutes the "use of force." This has put a question mark over the overseas dispatch of the SDF, which have been providing rear-area support to the U.S. military under the Iraq Special Measures Law, the Antiterrorism Special Measures Law, and the Japan-U.S. agreement on U.S. force realignment.

80 PERCENT of flights for U.S. military

Some 210 ASDF personnel and three C-130 cargo planes are now stationed in Kuwait. They fly four to five times a week to southern Iraq, Baghdad, and Arbil in the north. Over 80 PERCENT of the flights are for airlifting U.S. military personnel and supplies, and only once a week for the UN, which is engaged in reconstruction assistance in the country.

The government has insisted that the ASDF activities are constitutional by indicating that they are mostly for humanitarian and reconstruction assistance without revealing their specific activities and by explaining that the airports and flight paths are in noncombat zones, despite the deteriorating security situation in Baghdad.

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The court ruled that the airlifts are largely security support activities (that constitute rear-area support for the U.S. military), a decision contradictory to the government's view. The court also determined that the mission is a breach of Article 9 of the Constitution, which prohibits the use of force, concluding that airlifting armed soldiers to Baghdad, a combat zone, is an act integral to the use of force.

Flights often cancelled

In reaction to this ruling, a senior Defense Ministry official noted: "The overall security situation in Baghdad is irrelevant. The airport and flight paths are in noncombat zones." Administrative Vice-Defense Minister Kohei Masuda categorically said: "We will not review the activities."

When the ASDF's C-130s flew over Baghdad from last year through this year, alarms often rang out indicating that missiles were targeting them. Calling off a flight due to worsening security is not uncommon.

In light of (the Nagoya court's decision that) airlifting military personnel and supplies to a combat zone is unconstitutional, it is inevitable that the Maritime Self-Defense Force's refueling mission in the Indian Ocean under the Antiterrorism Special Measures Law, whose term once expired, will also be found unconstitutional. Before the House of Representatives Budget Committee on October 10, 2007, Foreign Minister Masahiko Koumura admitted that MSDF fuel had been used in the war, saying, "(The MSDF also provided fuel) to U.S. vessels that staged air strikes in Afghanistan."

Review of SDF overseas missions inevitable

In the talks on U.S. force realignment held in May 2006, Japan and the United States agreed to expand the close cooperation between the U.S. military and the SDF to a global level under the banner of improving the international security environment, going beyond the defense of Japan and responses to contingencies in areas surrounding Japan. In December 2006, the SDF Law was amended and the SDF's overseas activities were upgraded to primary duties, paving the way for integration of the U.S. military and the SDF in various parts of the world.

(The Nagoya court's) decision that found the ASDF's logistical support to U.S. forces in combat zones to be unconstitutional is likely to press the government for a review of the SDF's overseas activities. Although joining UN peacekeeping operations in compliance with UN requests may cause only a few problems, Japan is required to use extra caution in providing effective support to the U.S. military, such as the Iraq mission, which Japan has notionally carried out independently.

(2) Editorial: Discussion of right to collective defense now necessary

NIKKEI (Page 2) (Full)
April 18, 2008

The Nagoya High Court said in its ruling that some Air-Self Defense Force's (ASDF) airlifting activities conducted in Iraq violated the Constitution.

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The above account was given when the court explained the reasons for its verdict on an appeal filed by some 1,100 plaintiffs across the country demanding an injunction against the Self-Defense Forces' (SDF) dispatch to Iraq. The plaintiffs claimed that the SDF's activities in Iraq violated Article 9 of the Constitution. The judgment rejected all claims filed by the plaintiffs, and it does not legally restrict the SDF's activities now going on in Iraq.

The court's ruling this time is noteworthy in terms of pointing to ambiguity in the definitions of a combat zone and a noncombat zone, as well as on the government's far-fetched interpretation of the Constitution over the question of the right to collective self-defense.

The court said that the SDF's airlifting of armed soldiers in the multinational force to Baghdad is unconstitutional.

So far the government has noted that the region where the ASDF operates in Baghdad is a noncombat zone, but the ruling, judging from reports on the current situation in Iraq, recognized "Baghdad as a combat zone as defined under the Iraq Special Measures Law." It concluded that transport of armed soldiers to a combat zone comes under "cooperation that could be identified as being involved in the use of force by other countries," an act that is not allowed constitutionally.

Our position has been that the SDF should broadly take part in logistic support for United Nations peacekeeping operations (PKOs) or peace-building activities by a multinational force, but that the SDF should not participate in combat operations.

That is why we have insisted on the need for the government to shift its previous interpretation of the Constitution over the right to collective self-defense.

The reason the government had to leave the definitions of a "combat zone" and a "noncombat zone" ambiguous was because it had to allow the SDF to be engaged in their missions in Iraq without violating the government's interpretation of the Constitution. Former Prime Minister Shinzo Abe, who was aware of the need to make this point clear, established a panel of advisors to do so. The panel is headed by former Ambassador to the United States Shunji Yanai.

The panel has never met, however, since Yasuo Fukuda took office as prime minister. Fukuda appears to have in effect suspended debate on the matter. Meanwhile, Fukuda has instructed his staff to draft permanent legislation intended to allow the government to dispatch the SDF abroad as needed, and make preparations in the ruling bloc so that the bill will be submitted to the current session of the Diet.

If permanent legislation of this kind is established without touching on the government's previous interpretation of the Constitution regarding the right to collective self-defense, the

confusion will continue. The Nagoya High Court's verdict may be a criticism of the Fukuda administration's incoherent stance.

(3) Editorial: Court rejects peace cooperation?

SANKEI (Page 2) (Full)
April 18, 2008

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A high court ruled yesterday that the Air Self-Defense Force's mission in Iraq is unconstitutional. The court ruling, however, is extremely questionable, since it denigrates the ASDF's activities in Iraq for peace building and reconstruction assistance.

The Nagoya High Court has rejected the plaintiffs' demand to suspend the SDF deployment to Iraq. The high court sided with a district court's rejection of claims for an injunction against the SDF dispatch and demands for compensation. However, the court ruling said the ASDF's airlifting of U.S. troops and other multinational forces violated the first paragraph of Constitution Article 9.

The plaintiffs have decided not to appeal the ruling, so the state cannot appeal. It is the first court ruling to find the SDF dispatch to Iraq unconstitutional, and the decision will be finalized. This court judgment of unconstitutionality was shown in an obiter dictum that has nothing to do with the text of judgment.

The high court raised a question in an obiter dictum. This deviates from constitutional law litigation.

Moreover, the state, which is a defendant, is blocked from making a final appeal to the Supreme Court. We must point out that this denies Japan's court system of determining constitutionality, for which the Supreme Court serves as a court of last instance to judge constitutionality under Japan's three-instance judicial system.

The high court judgment of unconstitutionality is also questionable in itself. The court ruling said the ASDF's airlifting of multinational force troops to Baghdad is an act integral to other countries' use of force and can unavoidably be taken as being tantamount to its own use of force.

A Kuwait-based ASDF detachment has been tasked with airlifting troops and goods, including Ground Self-Defense Force members, to Iraq's southern districts on its C-130 transport planes. After the GSDF's pullout two years ago, the ASDF extended the scope of its airlifting activities to cover Baghdad and other localities in that country. The ASDF is currently engaged there in the task of airlifting personnel and supplies for the United Nations and multinational forces. The government maintains that Baghdad meets the Iraq Special Measures Law's requirement of SDF activities to be carried out outside a combat zone, and the ASDF has been only carrying out backup activities.

We must not forget that the ASDF's Iraq mission is also based on a U.N. Security Council resolution on the stationing of multinational forces.

Japan thereby shares the international community's determination not to let Iraq become a breeding ground for terrorists.

The "threat or use of force," which is prohibited in Constitution Article 9, can be interpreted to refer to a war of aggression. The court ruling takes the position that Japan's international cooperation for peace is unconstitutional. This judgment is hard to understand when considering the international surroundings of Japan.

The SDF was once ruled unconstitutional in a court judgment 35 years ago. This judgment, however, was dismissed in a higher court's ruling. The court ruling this time is probably aimed at overruling

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the theory of governing, namely, a high-level political act pertaining to the fundamentals of government is beyond the power of court judgment. An obiter dictum is not legally binding.

The government says it will continue the ASDF's Iraq mission. We take that for granted.

(4) Revisions to SOFA not in sight; Municipalities dissatisfied with improved administration

ASAHI (Page 3) (Abridged slightly)
April 17, 2008

In the wake of a string of incidents committed by U.S. service members in Japan, the governments of Japan and the United States have drawn up a set of measures to improve the administration of the Japan-U.S. Status of Forces Agreement (SOFA). Although the two governments are already in accord on having the United States provide Japan with the number of U.S. military personnel living off-base and information on deserters, Tokyo and Washington had aimed from the beginning at settling the matter by just improving the administration of the SOFA instead of making revisions to it. Base-hosting municipalities are dissatisfied with such a stance.

Limited effects expected from notification of deserters

Foreign Minister Masahiko Koumura announced on April 11 that Japan and the United States would share information on deserters. He said:

"In the event the U.S. declares a service member as a deserter, it immediately will ask prefectural police departments for (cooperation) in arresting him. This applies to all deserters. At the same time, the U.S. will notify the Japanese government."

A taxi driver was killed in Yokosuka, Kanagawa Prefecture (on March 19). A U.S. sailor has been arrested on charges of murder and robbery. He was a deserter. Criticism erupted about the fact that the U.S. did not notify Japan about him before the incident occurred. Taking this seriously, the governments of Japan and the United States repeatedly discussed the matter and made the announcement speedily just eight days after his arrest.

U.S. Forces Japan Commander Maj. Gen. Edward Rice, who took command this past February, shortly before the incident occurred, commented:

"An agreement has been reached with the Japanese government. What was specifically determined will be announced in the near future. I think this is good news for the two countries."

Effects of the measures are likely to be limited, however. According to the Foreign Ministry, a U.S. deserter is defined as any missing service member: (1) whose clear intent is to abandon the military; or (2) who has left his or her post for 30 days or more. In the case of (2), there is a possibility that a person might commit a crime before being declared as a deserter.

Heads of base-hosting municipalities and others are calling for stronger measures. Kanagawa Governor Shigefumi Matsuzawa said: "We have repeatedly called for tighter discipline among U.S. service members, a review of educational programs and other measures, but

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there has been no end to heinous crimes by U.S. service members." He has also called for a revision of the SOFA to establish a consultative council involving local governments under the Japan-U.S. Joint Committee, a consultative body based on the SOFA.

But neither Japan nor the United States has considered revisions to the SOFA. Their view is that improved administration will be sufficient. A U.S. service member was arrested in connection with a case in Okinawa in which a local girl was allegedly sexually assaulted in February. (The accusation was later withdrawn.) This has led to the improved SOFA operation of annually notifying via the Japanese government the base-hosting municipalities of the number of

personnel connected with the U.S. military and of service members living off-base. The U.S. also decided to hand the suspect of the Yokosuka murder case over to the Japanese side as soon as Japan made a request.

After the Yokosuka incident, U.S. Ambassador to Japan J. Thomas Schieffer told the press:

"If you look at the record of the investigation into this case, you will see that the United States and Japan have cooperated fully and that the SOFA functioned extremely well. I don't think the SOFA needs to be revised at this point."

(Japan-U.S. SOFA) more advantageous to host nation than pacts with other countries

USFJ Commander Rice said on April 14: "The accord is advantageous to the host nation (Japan) in comparison with similar documents (SOFA) with other countries."

Foreign Minister Koumura noted on February 15: "In light of global standards from the U.S. side, Japan is somewhat advanced."

True, Japan is the only country to which the United States has agreed to hand over suspects before indictment. Still, the steps are confined to improved administration of the SOFA, not revisions to it.

Following the schoolgirl rape in Okinawa in 1995, the governments of Japan and the United States agreed to improve the SOFA's administration. The United States decided to give "sympathetic consideration" to Japan's requests for pre-indictment handover of suspects "in heinous crimes, such as murder and rape." Based on this agreement, Japan has made requests in six cases, and the United States complied with them in five. The United States did not accede to the request in an attempted rape that occurred in Okinawa in November 2002. Although the United States did not provide clear reasons for refusing the request, there might have been such circumstances as that: (1) the U.S. service member, the suspect, strongly denied the charges (saying that the conduct was consensual), and (2) the U.S. side decided that there was insufficient evidence to indict him.

The SOFA concluded in 1960 between Japan and the United States was modeled after the SOFA (general agreement) concluded in 1951 between the United States and North Atlantic Treaty Organization (NATO) members. In Germany, investigations into crimes committed by U.S. service members and trials for U.S. military personnel are governed by the Germany-NATO treaty and the Bonn supplementary agreement. But in most cases, Germany has abandoned primary jurisdiction.

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What about South Korea? Before the U.S.-ROK SOFA was revised in 2001, South Korean authorities were allowed to take into custody U.S. suspects only after their sentences are determined. Today, they can have the custody of any U.S. military personnel suspected of any of 12 designated crimes, such as murder, kidnapping and arson, at the point of indictment.

The United States originally concluded SOFAs soon after the end of WWII when the host nations' legal systems were still insufficient with the aim of defending the rights of U.S. service members who became suspects in those countries.

Surugadai University Professor Emeritus Hiroshi Honma, who is well-versed in SOFAs, pointed out: "Japan's system to respect human rights is no less inferior to that of the United States. The time has come to fundamentally review the SOFA."

In some aspects, the Japan-U.S. SOFA is lagging behind those with Germany and South Korea when it comes to what is agreed upon on the use of bases. Under the Bonn supplementary agreement revised in 1993, the armed forces stationed in the country are required to conduct environmental assessments on their bases. An agreement was also reached in 2003 with Seoul requiring the United States to clean

up the environment when returning its bases to South Korea.

The council of the governors of 14 prefectures hosting U.S. bases presented to the government last year a petition calling for a SOFA specifying the application of domestic laws, such as the Air Pollution Control Law and the Clean Water Law, to U.S. bases in Japan.

In the Japan-U.S. SOFA, there are no agreements on environmental matters. Chances are high that once Futenma Air Station and other bases are returned to Japan with the advancement of the realignment of U.S. forces in Japan, environmental conditions surrounding U.S. bases will become a focal point. The governments of Japan and the United States must earnestly address tasks that cannot be resolved with the U.S.'s "sympathetic consideration" alone.

(5) Okinawa Prefecture asks U.S. Marine Corps to remove dropped bombs and suspend drill

OKINAWA TIMES (Page 2) (Full)
April 17, 2008

A U.S. Marine Corps AV-8 Harrier fighter dropped 500-pound bombs in waters outside the designated zone for the Torishima firing range in Kumejima Town. In this regard, Akira Uehara, the public relations officer of the Okinawa prefectural government, on April 16 made an oral request to the U.S. Marine Corps in Japan for the speedy removal of dropped bombs and the suspension of the AV8 Harrier fighters' drill until there has been an investigation to determine the cause.

Speaking of the incident of a taxi driver being robbed and injured in Okinawa City, Uehara asked Kadena Air Base to take disciplinary steps and preventive measures. On the U.S. side, public affairs officers handled Uehara's claims. The Okinawa government intends to seek a reply from the U.S. side.

Pointing out the delay in the U.S. military's report of the dropped

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bombs, as well as mistakes in the initial report, Uehara called on the U.S. side to clarify reasons for the confusion. He told the Marine Corps public affairs officer: "It goes without saying that sufficient consideration was not given to public safety, as well as to the anxiety of prefectural residents."

Uehara also demanded that the U.S. take all possible measures to

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prevent a recurrence of similar incidents by creating a communication system and toughing safety control.

Uehara told the Kadena Air Base public affairs officer:

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"It is a serious issue that a military police officer in charge of discipline of military personnel and maintenance of order was involved in the robbery while the Japanese and U.S. governments are studying preventive measures."

Uehara made similar oral requests to the U.S. Consulate General in

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Okinawa, the Foreign Ministry's Okinawa Office, and Okinawa Defense Bureau.

(6) Editorial: President Bush can't read global trend on fight against global warming

ASAHI (Page 3) (Full)
April 18, 2008

The contents of the measures announced by U.S. President Bush were hard to believe. We wonder what he is thinking.

President Bush said: "The U.S. will by 2025 halt the growth of emissions" of carbon dioxide (CO2) and other greenhouse gases that cause global warming. This can be taken, however, as a declaration that it will be unavoidable for the U.S. to continue to increase emissions for the next 17 years.

Since the U.S. withdrew its commitment to the Kyoto Protocol, which mandates industrialized countries to reduce greenhouse gas emissions, it has yet to set any target for emission cuts. Maybe the U.S. wants to say that revising such a stance is significant.

Nonetheless, the international community has already presented targets for stopping the growth of greenhouse gas emissions.

In the session of the Conference of the Parties to the United Nations Framework Convention on Climate Change held late last year, discussion was conducted on plans to "turn the growth of global-scale gas emissions to the minus column within 10 to 15 years," and to "reduce gas emissions by the industrialized countries by 25 to 40 PERCENT from 1990 levels by 2020." These figures are based on an estimate by the Intergovernmental Panel on Climate Change (IPCC). Although they did not become official targets, they are now important standards to be used in working out measures to curb global warming.

What startles us is that the president is ignorant of such a direction of discussions.

The U.S. is foremost among the industrialized countries. That is not all. The U.S. is the world's largest CO2 emitter (according to statistics in 2005). It is unbelievable that such a country has no intention to meet the target for the industrialized countries and

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might continue to discharge an increase amount of greenhouse gases for 15 years from now, until when the international community has decided to have the growth of its emissions fall in negative territory.

Don't forget that these targets are based on what was discussed in the G-8 Summit last year. In the Summit, the leaders agreed to look into the goal of "halving the world's greenhouse gas emissions by 2050" in a serious manner. The standards are a milestone on the road to achieving the goal.

The U.S. government played a role in bringing about the agreement. It also revised its stance to join talks under the United Nations on forming a new framework following the 2012 expiration of the Kyoto Protocol. There are now strong doubts about whether the government was really serious about tackling this challenge.

A matter of serious concern in discussion on a post-Kyoto scheme is whether China and India, major emitters, will join the new framework, although the two countries are not obligated to cut emissions as they are considered developing countries under the Kyoto Protocol. It is undesirable that the U.S. indicated this negative stance at such a time, because it will become difficult to call on China and India to share in the burden.

There are high hopes that the U.S. will change after the end of the Bush administration early next year. The three presidential candidates certainly appear to be more eager to fight global warming than the incumbent.

Even so, we cannot afford to waste time. How about inviting the U.S. presidential candidates to the Lake Toya Summit, in which the issue of global warming will take center stage?

(7) UNICEF Japan calls for revision of child pornography law

MAINICHI (Page 3) (Full)
April 18, 2008

The Japan Committee for UNICEF presented to six ruling and opposition parties a petition with some 21,000 signatures calling for amendments to the Law Punishing Acts Related to Child

Prostitution and Child Pornography. The petition calls for criminalizing "simple possession" of pornographic images and pictures of children under the age of 18, as well as animated cartoons of sexual abuse. The ruling parties plan to criminalize simple possession of images and pictures, excluding cases in which such pornographic material was sent unsolicited, and forgo criminalizing possession of cartoons.

SCHIEFFER